

"TOP TEN" REPORT OF SURVEY MISTAKES

Frequently, reports of survey (ROS) are found not legally sufficient after the initial legal review. The "Top Ten" reasons are listed below in descending order of importance.

1. The Investigating Officer (IO) failed to do his job. This manifests itself in a variety of ways, e.g., failing to investigate, failing to do a proper investigation, and failing to properly assess liability. Properly assessing liability includes recommending either financial liability or no financial liability. Frequently, the IO will recommend no liability even though the ROS supports a determination of liability, thus leaving his job for others to do. Perhaps, the IO thinks that he is doing the right thing by the individual. The only way to ensure fairness for everyone is to apply the same ROS rules to every ROS.

2. The IO's findings of fact are not supported by the evidence. The IO either misconstrues the evidence or fails to document his findings. Findings of fact are supported by sworn statements and documentary evidence. Each finding of fact should reference the specific piece(s) of evidence that supports it.

3. The IO's conclusion(s) is not supported by the findings. The IO either ignores the evidence or fails to make the proper determinations based on the evidence. The conclusion(s) must flow logically from, and be consistent with, the findings of fact.

4. The IO's recommendation(s) concerning financial liability is not supported by the evidence/findings/law. The IO made either a recommendation of liability or no liability which is inconsistent with the evidence and/or law.

5. The IO failed to follow the Basic Rule. The basic rule for determination of financial liability is: You must have either negligence or intentional misconduct which proximately caused the loss in order to have financial liability. See DA PAM 735-5, Survey Officer's Guide, Chapter 7.

6. The IO failed to understand that the term "loss" also includes a loss of property accountability. Before holding a person financially liable, the facts must show that a loss to the Government occurred. Most IOs understand that loss means loss of, damage to, or destruction of property, i.e., a physical loss. Most IOs overlook the fact that "loss" also means a loss of property accountability. Because the IO is sometimes unable to determine the circumstances of the physical loss, he mistakenly believes that no one can be held liable. Sometimes, the reason why the Government can not determine the actual circumstances of the physical loss (or whether there is an actual physical loss) is because it was first preceded by the loss of property accountability. See AR 735-5, paragraph 13-28d.

7. The IO failed to properly calculate the amount of the loss. The IO frequently calculates the value of a loss using the

depreciation method. Actually, this method is used only as a last resort. AR 735-5, Appendix B, specifies that the Fair Market Value (FMV) is the preferred method (and will be used first if possible) to determine the value. When the government property is not available for appraisal, the IO can establish FMV by citing commercial sources. If not appropriate, then the standard rebuild value will be used. If that can not be used, then the depreciation method is used as a last resort.

8. The IO failed:

a. to give the subject of a recommendation for liability the right to make a rebuttal statement. The IO prematurely turns in his ROS without giving the subject of a financial liability determination the opportunity to submit a rebuttal statement. If a rebuttal statement is submitted, the IO should review the statement and prepare a memorandum stating that he has considered the statement and either adheres to his original findings and recommendation or explains any change in his findings and recommendation.

b. to give the subject sufficient time to make a rebuttal statement. An individual who receives a hand delivered ROS has 7 calendar days from the date of receipt to reply. An individual who is unavailable for hand delivery but lives in the USA, has 15 calendar days from the date of mailing. An individual who lives outside the USA has 30 calendar days from the date of mailing. If no rebuttal statement is received within the allotted time, the IO should proceed with processing the ROS.

c. to have the individual properly complete blocks 30 - 32b on the DA Form 4697. The ROS must reflect that the individual has exercised his right to make a rebuttal statement even if it was only to decline.

9. The IO failed to mail a copy of the ROS to the respondent by certified mail with return receipt requested. If mailing a ROS to the respondent, AR 735-5 requires that only certified mail, return receipt requested, be used.

10. The IO failed to timely complete the investigation and include a memorandum explaining the cause for the delay.

Normally, an IO has 30 days to complete his investigation and must explain any delay in a written memorandum attached to the ROS.